

## 1 HOUSE BILL NO. 579

2 INTRODUCED BY SHOCKLEY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE PARTIES TO A DIVORCE OR  
5 SEPARATION IN WHICH A ~~RESTRAINING ORDER~~ TEMPORARY INJUNCTION IS SOUGHT MUST BE  
6 INFORMED BY THE COURT AT THE HEARING ON THE ~~ORDER~~ INJUNCTION THAT THE ~~ORDER~~  
7 INJUNCTION MIGHT LIMIT OR RESULT IN LIMITS ON THE RIGHTS OF ONE OR BOTH PARTIES RELATING  
8 TO FIREARMS UNDER STATE AND FEDERAL LAW; CLARIFYING THAT A PARTY AGAINST WHOM AN  
9 ~~ORDER~~ INJUNCTION IS SOUGHT IS ENTITLED TO NOTICE AND HEARING; PROVIDING THAT A PERSON  
10 CHARGED WITH AN OFFENSE MUST BE INFORMED BY THE COURT THAT CONVICTION MAY RESULT  
11 IN THE LOSS OF VARIOUS RIGHTS REGARDING FIREARMS UNDER STATE AND FEDERAL LAW; AND  
12 AMENDING SECTIONS 40-4-121 AND 46-7-102, MCA."

13

14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15

16 **Section 1.** Section 40-4-121, MCA, is amended to read:

17 **"40-4-121. Temporary order for maintenance or support, temporary injunction, or temporary**  
18 **restraining order.** (1) In a proceeding for dissolution of marriage or for legal separation or in a proceeding for  
19 disposition of property or for maintenance or support following dissolution of the marriage by a court that lacked  
20 personal jurisdiction over the absent spouse, either party may move for temporary maintenance, temporary  
21 support of a child of the marriage entitled to support, or a temporary family support order. When a party is  
22 receiving public assistance, as defined in 40-5-201~~(42)~~, for the minor children at issue or when a party receives  
23 public assistance during the life of a temporary family support order, the temporary family support order must  
24 designate separately the amounts of temporary child support and temporary maintenance, if any. The temporary  
25 child support order or the designated child support portion of the family support order must be determined as  
26 required in 40-4-204. The motion must be accompanied by an affidavit setting forth the factual basis for the  
27 motion, the amounts requested, a list of marital estate liabilities, a statement of sources of income of the parties  
28 and of a child of the marriage entitled to support, and, in the case of a motion for a temporary family support  
29 order, a proposal designating the party responsible for paying each liability. If ordered by a court, a temporary  
30 family support order must, without prejudice, direct one or both parties to pay, out of certain income sources,

1 liabilities of the marital estate during the pendency of the action, including maintenance liabilities for a party or  
2 support of a child of the marriage entitled to support. If income sources are insufficient to meet the marital estate  
3 periodic liabilities, the temporary family support order may direct that certain liabilities be paid from assets of the  
4 marital estate. At any time during the proceedings, the court may order any temporary family support payments  
5 to be designated as temporary maintenance, temporary child support, or partial property distribution, retroactive  
6 to the date of the motion for a temporary family support order. When a party obtains public assistance, as  
7 defined in 40-5-201(42), or applies for services under Title IV-D of the Social Security Act, after the court has  
8 issued a temporary family support order, the petitioner shall promptly move the court for designation of the parts,  
9 if any, of the temporary family support order that are maintenance and child support and the court shall promptly  
10 so designate, determining the child support obligation as required in 40-4-204.

11 (2) As a part of a motion for temporary maintenance, temporary support of a child, or a temporary family  
12 support order or by independent motion accompanied by affidavit, either party may request that the court ~~to~~ issue  
13 a temporary injunction for any of the following relief:

14 (a) restraining a person from transferring, encumbering, concealing, or otherwise disposing of any  
15 property, except in the usual course of business or for the necessities of life, and; if so restrained, requiring the  
16 person to notify the moving party of any proposed extraordinary expenditures made after the order is issued;

17 (b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or  
18 changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability  
19 coverage held for the benefit of a party or a child of a party for whom support may be ordered;

20 (c) enjoining a party from molesting or disturbing the peace of the other party or of any family member  
21 or from stalking, as defined in 45-5-220;

22 (d) excluding a party from the family home or from the home of the other party upon a showing that  
23 physical or emotional harm would otherwise result;

24 (e) enjoining a party from removing a child from the jurisdiction of the court;

25 (f) ordering a party to complete counseling, including alcohol or chemical dependency counseling or  
26 treatment;

27 (g) providing other injunctive relief proper in the circumstances; and

28 (h) providing additional relief available under Title 40, chapter 15.

29 (3) When the clerk of the district court issues a summons pursuant to this chapter, the clerk shall issue  
30 and include with the summons a temporary restraining order:

1 (a) restraining both parties from transferring, encumbering, hypothecating, concealing, or in any way  
 2 disposing of any property, real or personal, whether jointly or separately held, without either the consent of the  
 3 other party or an order of the court, except in the usual course of business or for the necessities of life. The  
 4 restraining order must require each party to notify the other party of any proposed extraordinary expenditures  
 5 at least 5 business days before incurring the expenditures and to account to the court for all extraordinary  
 6 expenditures made after service of the summons. However, the restraining order may not preclude either party  
 7 from using any property to pay reasonable attorney fees in order to retain counsel in the proceeding.

8 (b) restraining both parties from cashing, borrowing against, canceling, transferring, disposing of, or  
 9 changing the beneficiaries of any insurance or other coverage, including life, health, automobile, and disability  
 10 coverage held for the benefit of a party or a child of a party for whom support may be ordered. However, nothing  
 11 in this subsection (3) adversely affects the rights, title, or interest of a purchaser, encumbrancer, or lessee for  
 12 value if the purchaser, encumbrancer, or lessee does not have actual knowledge of the restraining order.

13 (4) A person may seek the relief provided for in subsection (2) without filing a petition under this part  
 14 for a dissolution of marriage or legal separation by filing a verified petition requesting relief under Title 27,  
 15 chapter 19, part 3. Any temporary injunction entered under this subsection must be for a fixed period of time,  
 16 not to exceed 1 year, and may be modified as provided in Title 27, chapter 19, part 4, and 40-4-208, as  
 17 appropriate.

18 (5) The court may issue a temporary restraining order for a period not to exceed 20 days without  
 19 requiring notice to the other party only if it finds on the basis of the moving affidavit or other evidence that  
 20 irreparable injury will result to the moving party if an order is not issued until the time for responding has elapsed.

21 (6) The party against whom an order A TEMPORARY INJUNCTION is sought must be served with notice and  
 22 a copy of the motion and is entitled to a hearing on the motion. A response may be filed within 20 days after  
 23 service of notice of motion or at the time specified in the temporary restraining order.

24 (7) At the time of the hearing, the court shall:

25 (a) inform both parties that the order TEMPORARY INJUNCTION may contain a provision or provisions that  
 26 limit the rights of one or both parties relating to firearms under state law or a provision or provisions that may  
 27 subject one or both parties to state or federal laws that limit their rights relating to firearms; and

28 (b) determine whether good cause exists for the injunction to continue for 1 year.

29 (8) On the basis of the showing made and in conformity with 40-4-203 and 40-4-204, the court may  
 30 issue a temporary injunction and an order for temporary maintenance, temporary child support, or temporary

1 family support in amounts and on terms just and proper in the circumstance.

2 (9) A temporary order or injunction, entered pursuant to Title 40, chapter 15, or this section:

3 (a) may be revoked or modified on a showing by affidavit of the facts necessary to revocation or  
4 modification of a final decree under 40-4-208;

5 (b) terminates upon order of the court or when the petition is voluntarily dismissed and, in the case of  
6 a temporary family support order, upon entry of the decree of dissolution; and

7 (c) when issued under this section, must conspicuously bear the following: "Violation of this order is a  
8 criminal offense under 45-5-220 or 45-5-626."

9 (10) When the petitioner has fled the parties' residence, notice of the petitioner's new residence must  
10 be withheld except by order of the court for good cause shown."

11

12 **Section 2.** Section 46-7-102, MCA, is amended to read:

13 **"46-7-102. Duty of court.** (1) The judge shall inform the defendant:

14 (a) of the charge or charges against the defendant;

15 (b) of the defendant's right to counsel;

16 (c) of the defendant's right to have counsel assigned by a court of record in accordance with the  
17 provisions of 46-8-101;

18 (d) of the general circumstances under which the defendant may obtain pretrial release;

19 (e) of the defendant's right to refuse to make a statement and the fact that any statement made by the  
20 defendant may be offered in evidence at the defendant's trial; ~~and~~

21 (f) that conviction may result in the loss of various rights regarding firearms under state and federal law;

22 and

23 ~~(f)(g)~~ of the defendant's right to a judicial determination of whether probable cause exists if the charge  
24 is made by a complaint alleging the commission of a felony.

25 (2) The judge shall admit the defendant to bail as provided by law."

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